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MEMORANDUM ON WATKINS COMMITTEE
REPORT ON CHARGES AGAINST SENATOR MCCARTHY

The Watkins Committee Report on the Senate resolution to censure Senator McCarthy is of interest to the Central Intelligence Agency for the emphasis the committee places on the right of Congress to investigate the Executive Branch and to obtain information as to operations whether or not such operations are classified.

I

The Watkins Committee Report deals with two charges involving the powers of Congress with respect to classified information. One of these is that McCarthy incited Government employees to give him classified information in violation of law and the constitutional rights of the President under the separation of powers doctrine. The committee found that McCarthy's invitation to Federal employees to supply him with information of wrongdoing was sufficiently broad in its language and necessary implication to include classified information. The committee also found, however, that his invitation was "motivated by a sense of official duty and not uttered as the fruit of evil design or wrongful intent." The committee then went on to find,

"That were the invitation as made, affirmed, and reasserted to be acted upon by the Federal employees, as to classified material affecting the national security, the orderly and constitutional functioning of the executive and legislative branches of the Government would be unduly disrupted and impeded, and this select committee

warns such employees that such conduct involves the risk of effective penalties."

In view of this, the committee concluded that McCarthy's failure expressly to exclude classified documents from his invitation was conduct which could not be condoned and was improper. In spite of this conclusion, the committee "preferring to give Senator McCarthy the benefit of whatever doubts and uncertainties may have confused the issue in the past, and in recognition of the Senator's responsibilities as Chairman of the Committee on Government Operations and its Permanent Subcommittee on Investigations" did not feel justified in recommending censure.

The committee then made a recommendation of particular interest to the Central Intelligence Agency:

"The committee recommends that the leadership of the Senate endeavor to arrange a meeting of the Chairman and the ranking minority members of the standing committees of the Senate with responsible departmental heads in the executive branch of the Government in an effort to clarify the mechanisms for obtaining such restricted information as Senate committees would find helpful in carrying out their duly authorized functions and responsibilities."

In its discussion of the legal points involved, the committee made several other statements of interest to the Central Intelligence Agency concerning classified information. McCarthy had argued that Government employees not only were permitted, but had a duty, to give him the information he had requested and that such information "could not be insulated from exposure by a rubber stamp." In support of his contention he cited 5 U.S.C. § 652(d) which reads as follows:

"The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress or any Member thereof, or to furnish information to either House of Congress, or to any committee or Member thereof, shall not be denied or interfered with."

The committee said it believed that the above section did no more than affirm that Federal employees do not lose or forfeit any of their rights merely by reason of their Federal employment.

McCarthy also cited 18 U.S.C. § 4 as follows:

"Whoever, having knowledge of the actual commission of a felony, cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both."

The committee concluded that that section applied "only to persons possessing actual personal knowledge of the actual commission of a felony, as distinguished from information obtained by reviewing files."

The committee then considered the general question of the right of Congress to investigate the executive branch and to be informed of its operations. After emphasizing that the executive could in no way interfere with this right and after recognizing the necessity for a classification system to protect information involving national security, the committee concluded that Congress had the right to classified information provided orderly and formal application were made to the responsible heads of departments or to the Presidential office itself. The committee said,

"But the President, we think, cannot (nor do we believe he has sought by any order or directive called to our attention) deny to the Congress, or any duly organized committee or subcommittee thereof, and particularly the Committee on Government Operations of the Senate, any information, even though classified, if it discloses corruption or subversion in the executive branch.

"This, we think, is true on the simple basis that the Congress is entitled to receive such information in the exercise of its investigatory power under the Constitution. The Congress, too, is charged with the responsibility for the welfare of the Nation.

"What the executive branch may rightfully expect is that the coequal legislative branch, or its authorized committees, will inform the President, or his specially designated subordinate (ultimately the Attorney General) of the request, and that the desired information will be supplied subject to the protectives customarily thrown around classified documents by such committees."

The committee touched lightly on the allegation that McCarthy's statements were an incitement to employees to violate the Espionage Act, 18 U.S.C. § 793(d) and (e). The committee said that § 793 did not define who is "not entitled to receive" information relating to the national defense. The committee concluded that McCarthy, as chairman of the Senate Committee on Government Operations and its Permanent Subcommittee on Investigations, could not be said to be "a person not entitled to receive" information relating to the national defense within the meaning of the Espionage Act.

II

McCarthy was also charged with having unlawfully obtained a classified document from an executive department and with having failed to restore it. The committee made no formal findings on the

"unlawfully obtained" point, but did find that McCarthy offered to make the contents of the classified document public in the course of his defense before the Mundt Committee. In doing this, the Watkins Committee decided that he committed a "grave error" and "manifested a high degree of irresponsibility." The committee said that he should have applied in advance to the Attorney General for express permission to use the document under adequate safeguards, or he should have requested the committee to receive the document in executive rather than open session. Although there is an implication in the latter statement that classified information may be introduced in executive session without any request for the permission of the executive branch, that was probably not the intention of the members of the committee, in view of their emphasis on the importance of making such a request to the classifying agency.

In spite of their views as to the seriousness of McCarthy's actions in offering to make public classified information, the members of the committee did not recommend censure on that ground, as they found mitigating circumstances in the fact that McCarthy was under the strain of being investigated by the Mundt Committee and in the fact that the contents of the document were relevant to the investigation.

Although the committee said that inherent in the charge was the possibility that McCarthy was in violation of the Espionage Act, it did not make a direct statement on the subject. McCarthy's

conduct was said to be "all the more serious when considered in the light of the Act of June 25, 1954" (The Espionage Act), "a transgression of authority" and "an assumption of authority which itself is disruptive of orderly governmental processes, violative of accepted comity between the two great branches of our Government, the executive and legislative, and incompatible with the basic tenets of effective democracy."

The committee reiterated its position that Congress has an absolute right to classified documents if proper request is made. After concluding that the document in question was a legally classified document and that such classification was binding on all officers and employees of the Government, the committee said,

"Such a conclusion is not inconsistent with the further view that representatives of the legislative branch have a complete legal right to obtain access to such documents by using the methods available to them to get such information by formal request to the classifying agency or to the Attorney General or to the President himself. It is only when such orderly methods are rebuffed that an issue between two coequal branches of the Government can or should develop."

Another point that the committee brought out involved the authority to declassify. McCarthy contended that by deleting certain material from the original 15-page document, the 2½-page extract became unclassified. The committee refuted this by saying that material copied from a classified document retained the same classification as the classified document and that declassification could only be effected by a legally constituted authority.

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